Supreme Court, U.S.
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No. 04-732

In The

Supreme Court of the United States

CITY AUTO SALES, LLC,

Petitioner,

v.

SHARON TAYLOR,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Tennessee At Jackson

BRIEF OF THE RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

SAM F. COLE, JR.
100 North Main Bldg., Suite 2519
Memphis, Tennessee 38103
Tel. 901-525-7648
Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

INTRODUCTION

Respondent, Sharon Taylor, submits this Brief in Opposition to the Petition for a Writ of Certiorari filed by City Auto Sales, LLC. The arguments of the Petitioner essentially urge two grounds for granting a Writ of Certiorari: (1) that there is a claimed "need for a uniform standard" on the Issue presented, and (2) that if Ms. Taylor had filed her Complaint in a United States District Court, a different outcome would have occurred. As will be shown hereafter, each of these two grounds lack any validity or merit whatsoever.

REASONS FOR DENYING THE WRIT

The fallacy of the Petitioner's first argument charges that 9 U.S.C. § 2 should be restricted to "Federal Court interpretation only." That notion simply ignores the provisions of that statute and this Court's prior cases construing it. State contract law must be applied in deciding whether there is a binding arbitration agreement: **Allied-Bruce Terminix Companies v. Dobson, 513 U.S. 270, 281, 115 S.Ct. 834, 843 (1995); First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 945, 115 S.Ct. 1920, 1924 (1995).** When a state court applies its own law of contracts, it may not treat contracts involving a federal arbitration clause any differently than other contracts. The Tennessee Supreme Court met this requirement. That has not even been recognized by the Petitioner. In deciding that the provisions for arbitration were unconscionable, the Tennessee Supreme cited and applied previous Tennessee cases: **Haun v. King, 690 S.W.2d 869, 872 (Tenn.Ct.App. 1984)** and **Buraczynski v. Eyring, 919 S.W.2d 314, 320 (1996)** which address the issue of just how unconscionable and oppressive contracts are viewed under the law of contracts

in Tennessee. Neither of these two Tennessee cases involve the Federal Arbitration Act. The Tennessee Supreme Court has basically decided that contracts of adhesion that are oppressive to the weaker party, or which serve to limit the obligations and liability of the stronger party, will not be enforced. That would be so under any Tennessee contract whether a federal arbitration clause was, or was not, contained in it. General contract defenses such as fraud, duress or unconscionability, grounded in state contract law, may operate to invalidate arbitration agreements: **Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681, 687, 116 S.Ct. 1652 (1996)**. Under the contract of adhesion prepared by City Auto Sales, it sought to insulate itself from a lawsuit, while allowing itself the use of all of the tools of state court action against Ms. Taylor. In viewing such a one-sided agreement, the Tennessee Supreme Court simply found that the majority holdings of other courts on this issue were more persuasive; (Footnote No. 4. Opinion of the Supreme Court of Tennessee). If there were a "need for a uniform standard" on the issue presented by the Petitioner, this Court would have granted Writs of Certiorari in the following cases: **Williams v. Aetna Fin. Co., 700 N.E.2d 859 (Ohio 1998), cert. denied, 526 U.S. 1051 (1999)** and **Circuit City Stores, Inc. v. Adams, 279 F.3d 889 (9th Cir.), cert. denied, 535 U.S. 1112, 122 S.Ct. 2329 (2002)**. In **Williams** (supra), an arbitration agreement involving a home equity loan was found to be unconscionable and unenforceable because the contract was viewed as a contract of adhesion. In **Circuit City Stores, Inc.** (supra), the contract required employees to arbitrate all disputes or controversies, but did not require Circuit City to arbitrate its claims against employees. The argument that the outcome in this case would have somehow been different in a U.S. District Court is even more lacking in merit. For that notion the Petitioner has cited **Harris v. Green Tree**

Financial Corp., 183 F.3d 173 (3rd Cir. 1999). As noted in the case of **Banc One Acceptance Corp. v. Hill, 367 F.3d 426, 433 (5th Cir. 2004), Harris** "only cites federal court decisions that apply *state law* in support of its holding regarding the procedural unconscionability argument." See also **Hagedorn v. Veritas Software Corp., 250 F.Supp.2d 857 (S.D.Ohio 2002)**, where a contract was held to be unconscionable when one party must arbitrate all disputes, but the other party has the absolute right to legal relief in a court under the contract. Weaker and more vulnerable parties may be protected against such contracts of adhesion under state law. Indeed, procedural overreaching has been held to create "a sham system unworthy even of the name of arbitration;" **Hooters of America, Inc. v. Phillips, 173 F.3d 933, 940 (4th Cir. 1999)**.

CONCLUSION

The disparity of bargaining power between Sharon Taylor and the Petitioner is all too typical for any modern day shopper or consumer. Persons as Ms. Taylor are given a prepared contract that they are to sign without question. If they will not, they are simply asked to leave. With that sort of leverage, our country would no longer have a government of the people, by the people and for the people under the law of contracts. We would simply have a government of the corporations, by the corporations and for the corporations without any protections of judicial supervision under the law of contracts. The Petition of City Auto Sales, LLC should accordingly be denied.

Respectfully submitted,

SAM F. COLE, JR., Attorney